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Intellectual Property Rights

All businesses have tangible assets: buildings, machines, and accounts receivable. Companies have intangible assets too: trademarks, patents, copyrights, reputation, and goodwill. These intangibles sometimes defy valuation, but may be worth more than the building and machines used to make a company's product.

SEMA places a high premium on the protection of trademarks, patents, and copyrights, also known as intellectual property (IP). We will describe these types of IP, the benefits of getting a mark or patent registered with the appropriate federal authorities, the application process, and the benefits of registration. We will also discuss some tools for stopping imports of counterfeit or confusingly similar product.

The aftermarket industry thrives on creativity. What is new can also be subject to quick adaptation in the presence of fierce competition. This may be the product itself, but also could apply to unique packaging, slogans, logos and other materials used to promote the product. If intellectual property rights (IPR) exist, the owner must take steps to claim and then enforce those rights.

Sometimes a company mistakes a "fair-use" adaptation as infringement. More frequently, the company inadvertently has allowed a knock-off by failure to register IP with the proper authorities. Sometimes it falls into a gray area, and it is up to a court or other party of jurisdiction to distinguish between fair-use or infringement.

Trademarks

A trademark is a name, logo or other feature used by a company to identify itself as the source of a product or service. If established properly, trademarks can be a means to establish legal rights prohibiting competitors from using the same distinguishing features and identifiers.

1. What is a trademark?

Trademarks have a common meaning to many people but they also have a more legalistic meaning which is helpful in understanding trademark rights. A trademark is:

Any word, name, symbol, slogan or design used in commerce to identify the source of goods or services and which distinguishes the goods and services from those of others. Trademarks may include package design, shapes, sounds, smells and colors.

The definition above is important because it gets to the heart of what trademark rights are all about. A tag on a pair of blue jeans with the mark "LEVIS" distinguishes the jeans as coming from the clothing maker Levi Strauss & Company. A company uses trademarks to make its products distinctly recognizable from a competitor's products and to symbolize the quality and goodwill associated with the company. Because a trademark conveys this important information to consumers, companies naturally want to prevent others from using their marks.

However, to create a legally enforceable trademark, certain requirements, as discussed below, must be met.

2. How are trademark rights obtained?

When possible, it is best to plan trademarks in advance to take maximum advantage of the U.S. trademark laws. The U.S. has both "common law" trademark rights and additional statutory rights which are available for marks which are registered with federal (and state) trademark authorities.

Rights based on use

"First and continuous use" is the basis for establishing exclusive common law rights to a trademark in the U.S. Further, the system of federal registration is based on first use.

o "Use" for trademark law purposes is accomplished by affixing the mark to a product or service as actually sold in commerce or by advertising and using the mark in connection with delivering a service. It is noteworthy that trademark rights acquired by first use (known as "common law" rights) are not as extensive as the rights acquired under registration with the U.S. Patent and Trademark Office (PTO). Rights based on use alone are limited:

-- The right to exclusive use of the trademark is enforceable only in the geographic area where the product (or service) is distributed.

-- In some cases the courts will expand the right to include the so-called "area of reputation" and that area into which one might naturally expand business.

Rights obtained under federal trademark registration

While it is possible to secure limited exclusive trademark rights simply by being the first to use a trademark, it is almost always worthwhile to secure the more extensive rights that come by registering the trademark with the PTO. Advantages of federal trademark registration including the following:

- o Registration is among the very best ways to put the public on notice of your exclusive rights to the mark.

- o Registration creates a legally recognized "presumption" that the registrant owns the rights to the mark, an important advantage if you find yourself in court to protect your trademark.

- o Registration also grants you exclusive trademark rights nationwide, rather than the regional rights obtained by use alone.

- o Registration also provides the right to sue in federal court to halt infringement and to seek damages, lost profits, costs and triple damages under certain circumstances, as well as other advantages.

The benefits of federal registration are obvious. What is not so obvious is the reality that the PTO only accepts for registration those marks that meet specific criteria. For this reason, it is advisable to plan your trademark to meet the PTO criteria.

Tip: Many companies have never registered their trademarks despite years of use. It's never too late to register a mark!

3. Planning a "good" trademark

A trademark must be unique enough that it identifies the source of the product so that consumers can distinguish your goods and services from your competitor's. The mark should also have the qualities that make it acceptable to the PTO. The PTO carefully reviews all trademark applications and applies criteria that screen out marks that are not unique. The following are different types of marks that generally meet the PTO's criteria for "uniqueness" and are desirable marks:

Fanciful or fictitious mark:

"Exxon" for petroleum products and "Kodak" for cameras. The words were original creations and make for very unique trademarks because it is highly unlikely someone making the same product has chosen or would chose this mark.

Arbitrary marks:

"Apple" for computers and "Tide" for laundry detergent. Usually common words not associated with the product or service. These also tend to be very unique marks.

Suggestive marks:

"Beautyrest" for mattresses and "Accutune" for automotive testing equipment. A distinctive term that relates to the product or service but is not merely a description. Suggestive marks are not quite as useful as the first two types for two reasons: 1) it is more probable someone may have already thought of, and used, the mark; and 2) someone may try in the future to use similar suggestive features and you will either have to oppose the mark or risk dilution of your mark.

Remember if the mark you have developed is fanciful or arbitrary, it is important to register it. If you fail to register the mark and it later becomes associated with a product or service common to the marketplace, it will be refused registration. Examples of once valuable marks that have become common non-protectable terms include "escalator," "aspirin," and "zipper."

o Avoid "problem" marks: Some marks have features which make them undesirable when it comes to registration. These marks are ones which use generic or merely descriptive terms. The PTO will often refuse registration of such marks because granting exclusive rights could keep other firms from being able to label a product. The following are several examples.

Generic marks:

"Screenwipe" for a computer screen wiping cloth and "club carrier" for a golf club carrier. These marks are generic words which merely define or describe the goods or services.

Descriptive marks:

"Quick Print" for a printing service or "Bug Mist" for an insecticide. The marks merely describe a quality, characteristic or ingredient of the goods or service, but nothing unusual.

PTO may accept a descriptive mark for registration, but under circumstances that give the trademark owner reduced rights. Later, after such a mark has gained what is known as "acquired distinctiveness," it may be eligible for full rights.

Other types of marks to be avoided include:

-- geographic names: such names are commonly used by other businesses (ex: California Beach Resort) and are not considered "unique" under PTO criteria.

-- surnames: common surnames (ex: Smith's Garage or Pickett Hotel) often are not unique and frequently are used by others, making it difficult to secure "first use" of the mark.

-- misspelled words: the misspelling is not apparent when used verbally (ex: Phish vs. Fish).

Like "descriptive" marks, these marks may be accepted for registration, but often with reduced legal rights.

o Avoid starting with someone else's trademark: the trademark search: Once a mark has been selected, a search should be conducted to make sure it is available. A trademark search helps determine whether someone else: 1) is already using the mark for a similar type of goods or services and/or 2) has registered the mark. There are a number of ways to conduct a trademark search but SEMA recommends working with a qualified adviser in obtaining or conducting a proper trademark search. Search firms usually offer a few levels of service:

-- A first level search should check whether the mark is already registered with the PTO or state trademark offices. If the search shows the mark or a similar mark is already registered, it's usually advisable to pick a different mark.

-- If a first level search finds no conflict, it is advisable to do a second level search that scans various databases to help determine whether the mark is already being used by others. If so, the party may have already established trademark rights based on prior use even though the mark is not registered. The search will review Internet domain names, company names, and common reference materials (databases of trade journals, phone books, etc.). An enhanced search will include corporate records of the Secretaries of State, newspapers and various other databases.

-- A trademark search usually ranges from about \$250 to \$600 depending upon the level of search. Among other things, the search is a good insurance policy for demonstrating "due diligence" in case there is a future claim of infringement.

Search findings should be reviewed by a qualified adviser. If no conflicting uses are found, you may adopt the mark and apply for federal registration. If conflicting uses are found, your attorney may advise you to either pick a different mark or be prepared for possible problems and limitations you might encounter due to there being a prior user.

Note: While the search may be comprehensive, there is no complete certainty that someone is not already using the mark. This is one of the reasons a fictitious or fanciful name is often the better choice.

o PTO registration process: The PTO's Basic Facts about Trademarks describes the registration process in detail and should be reviewed as part of your trademark planning: Unless there are special circumstances, all trademark applications must be filed electronically via the Internet. The information below highlights several key aspects about the registration process.

o Classes of goods and services: Trademark law provides the right to exclusive use of a trademark, but within a specific classification of products and services. The owner must describe how the mark is used with precise, limiting language. There are 45 separate classes of goods and services in which to register a mark. Examples include class 7 (machines, electric motors, components for automotive engines), class 12 (vehicles), class 35 (retail automotive-parts store services) and class 37 (vehicle repair services). The PTO will assist in determining which class is appropriate for the mark. In some instances the mark is used in more than one class. In this case, the mark must be registered in each separate class in order to obtain maximum protection for the mark in that class. Correspondingly, the descriptive language on how the mark is used changes according to the class in which it is registered.

o Application fee: The PTO application fee at the time of this publication is \$335 per class.

o Trademark application: Trademarks may be registered with the PTO based on either "actual use" of the mark in interstate commerce or the "intent-to-use" the mark in interstate commerce. If you intend to use a mark within about six to eighteen months, then you can get it on record with the PTO by filing an "intent-to-use" application first. Once you are using the mark, you can then demonstrate actual use to the PTO (with an additional filing fee of \$100 per class).

o Processing the trademark application: A PTO trademark examining attorney will review your application and further determine if there is a mark already registered that may be confusingly similar to your mark. The examining attorney will also review your application to ensure that it satisfies a number of legal requirements. If there is a problem, the examining attorney will document his findings by sending you an Office Action. Applicants have six months to respond. Assuming there are no problems, the PTO publishes your mark in the "Official Gazette" for comment by the public for a 30-day period. This commentary period gives a person the chance to oppose registration, very similar to the "Legal Notices"

that you see in the newspaper when a piece of property is to be auctioned. If there is no opposition, the applicant receives a registration.

o Use it or lose it: Federal trademark registration is not perpetual. Registration is granted for a ten-year period with the right to renew thereafter. However, the registrant must demonstrate that they are continuing to use the mark or the registration will be cancelled. The registrant must demonstrate use at the time of initial registration, and confirm continued use between the fifth and sixth year after initial registration. A trademark should be used and protected or, over time, the mark will lose its strength and the courts may not enforce the mark's validity.

Tip: How to use it correctly: Trademarks should be a vital part of your company's marketing strategy. If used effectively, consumers will identify the trademark with your company's name and products. Prominently display the mark on your packaging or materials. The public doesn't recognize a trademark unless you promote and publicize it. For example, use a different font size to differentiate its appearance and presentation from other elements on your boxes or labels. You can actually lose your mark if you don't use it on a regular basis or you don't prevent others from using it. Steps one can take may include sending a cease-and-desist letter or taking some other legal action.

o Labeling a mark: It is important (although not required) that a mark be identified as a protected property. If it is registered with the PTO, the symbol ® may be employed next to the mark each time it is used. For unregistered marks or marks which are in the process of registration, the owner may display "TM" for trademark or "SM" or "TM" for service mark. Note: premature use of the symbol ® on an unregistered mark is improper and should be avoided.

o State trademark protection: In addition to federal trademark protection, most states allow registration of marks at the state level. Federal registration provides national coverage so it is generally unnecessary to register with individual states. However, some local companies turn to state registration when they can't qualify for federal registration because their mark is not used in interstate or foreign commerce. Note: if you only have a state registered trademark, it doesn't necessarily provide you the exclusive right to use it because someone else may have used the mark first and/or registered it elsewhere. Conversely, since registration is not necessary to establish rights to use a mark, if you used the mark first, you should be able to continue using the mark within the original geographic location.

o International trademarks: A registered U.S. trademark does not necessarily protect the mark on goods or services in the international arena. Exporting companies should also consider registering trademarks, as well as copyrights and patents, in the other destination countries. Foreign trademark law varies from country-to-country. The PTO now can receive trademark applications for certain foreign countries

through the United States' adoption of the Madrid Protocol. Please consult this link for further information: [International trademark applications](#).

o Federal trademark registration versus common-law rights: A common misconception is that a mark must be registered with the PTO before trademark rights can be secured and protected. Your trademark rights begin as soon as you use the mark to distinguish your goods and services from others. These rights are called "common-law" rights. However, when relying on common-law rights, you, not the alleged infringer, have the burden of showing that you are the owner of the trademark. First, you have to demonstrate that your trademark is being infringed. Second, you have to prove that the mark is yours.

Why should you register your mark with the PTO? Here are a few good reasons.

-- A federal trademark registration, good for renewable terms of 10 years, is proof that you are the true owner of the mark.

-- Unlike a common-law trademark or a state trademark registration, a federal trademark registration is good in all 50 states, the District of Columbia, and U.S. territories. It also may allow you to claim certain rights to your mark in foreign countries where you are doing business if you decide to register your mark there.

-- It is a public notice to others that the mark truly exists and is registered to an individual or a business.

-- After just 5 years of registration, you can make a claim of incontestability to the mark, allowing you to claim exclusive ownership of the mark forever.

o Trade dress: Trade dress is a type of unregistered trademark. Like a traditional trademark, trade dress serves to identify the source of the product. However, unlike a traditional trademark in the form of a word or design, trade dress protects the entire packaging, design, and overall "look" of a product. An example of trade dress is the appearance, color scheme, and architectural design of McDonald's restaurants as well as Amoco service stations. Notice that the buildings and interiors of these businesses have the same placement of color and same architectural style so that the overall package does not vary from place to place. The overall presentation would be viewed as a form of trade dress. To be viewed as proprietary, the trade dress must have "acquired distinctiveness." In other words, the consumer must be able to associate the particular trade dress with its owner. Acquired distinctiveness usually is attained only after strong sales over a long period, supported by consistent advertising, promotion and publicity of the features of the trade dress.

Tip: Rather than obtaining a federal trademark or patent registration, many companies claim "trade dress" protection for their product's appearance. Frequent arguments are that it is too costly or time-consuming to file a registration application, or that the product's uniqueness should provide common-law protections. The fact is, trade dress is difficult to enforce. It also is difficult to prove who first established rights to the trade dress. As a result, it quickly becomes more costly to pursue than a federal registration. To be protected, trade dress must be instantaneously identifiable in the mind of the purchaser. As noted, this is usually the function of strong sales over a long period, supported by consistent advertising, promotion and publicity. That is difficult to prove. However, a federal trademark or design-patent registration offers prima facie evidence of a registrant's exclusive right to use the mark. Registration shifts the burden from the owner to the alleged infringer to challenge the registration's validity.

Summary: Federal trademark registration with qualified assistance may cost \$1000 or more per mark, per class of registration. However, registration is advisable in order to protect and enhance the value of a mark and to preclude a competitor from using the mark. Because trademark law is complex, it is recommended that you seek the assistance of a qualified legal adviser to assist in developing and registering your trademarks.

Examples of Trademarks

Words: Ford's "MUSTANG" for automobiles [U.S. Reg. No. 1467208];

GM's "IMPALA" for automobiles [U.S. Reg. No. 0661322].

· Designs: American Racing Equipment's design for the Torq Thrust wheel
[U.S. Reg. No. 2805037]



· Designs: Chrysler's "Pentastar" design for automobiles
[U.S. Reg. No. 0801717]



· Words and Designs: Good Year and Winged Foot Design [U.S. Reg. No. 0883095]



· Configurations: The shape of the front nose of General Motors' Hummer vehicles including the grill area and adjacent panels [U.S. Reg. No. 1959544]



· Sound: The roar of MGM's lion for entertainment services [U.S. Reg. No. 1395550]

· Color: The color brown for United Parcel Service (UPS) and its package delivery service [U.S. Reg. No. 2131693]

· Trade Dress: The overall "look" or packaging for a product or a service. The trademark is associated with McDonald's hamburgers, architecture, product packaging, etc. [U.S. Reg. No. 1631967]



Patent

Patents stimulate private investment in new, useful and non-obvious technological information (inventions) through the granting of exclusive property rights to the patent holder.

1. What is a patent?

The subject matter of patent is the invention or discovery of any new and useful process, machine, manufacture or composition of matter, or any new and useful improvement of a previously existing process, machine, manufacture or composition of matter. Patents may also protect ornamental features (designs) rather than the function of articles.

Invention is the absolute prerequisite to patentability, and it is defined as the finding out, contriving, or creating, by the action of intellect, of something not existing or not known before.

For an invention to be patentable, the invention must be:

1. New, which means that the person applying for the patent must be the original inventor of the object claimed, and that the invention must not have been known or used by others before the discovery of it; and

2. Useful, which means that the invention must be capable of being beneficially used for the purpose for which it is designed; and

3. Non-obvious, which means that for an invention to be patentable it must, at the time of the invention or discovery, be an improvement over the prior art which would not be obvious to a person of ordinary skill in that art.

2. Who holds the property rights?

The first inventor holds the property rights.

o In the United States, the first person to invent the claimed subject matter may apply for and receive a patent.

o Note: The first person to file an application for a patent may not receive that patent if it can be proven that that person is not the first person to invent the claimed subject matter.

Where more than one person is the inventor, all of the inventors hold the property rights.

Patents may be sold, assigned, willed or otherwise transferred to people other than the inventor or inventors of record. Upon the filing of the appropriate documents of assignment with the Patent and Trademark Office, the assignee obtains all of the rights and limitations granted to the inventor.

3. When do rights vest?

A new, useful and non-obvious invention becomes eligible for patent registration when it is both:

1. Conceived, which occurs at the time the inventor has formulated and disclosed a complete idea for a product, process or composition, and the resulting invention is made sufficiently plain to enable those skilled in the art to understand it; and

2. Reduced to practice, which occurs at the time the invention is perfected, successfully performed, and adapted to actual use.

4. What are the rights/limitations?

The issuance of a patent grants to the inventor (the patent registrant), for a limited term, the right to exclude others from:

- o Making, using, offering for sale, or selling the invention throughout the United States, or importing the invention into the United States; and

- o If the invention is a process, the right to exclude others from using, offering for sale, or selling throughout the United States, or importing into the United States, products made by that process.

A "utility" patent (defined below) generally provides up to 20 years of exclusive rights from the time the patent application was filed.

A "design" patent (defined below) has a term of 14 years from the time the patent is granted.

Practical Patent Considerations

- o "Utility" and "design" patents: There are two basic types of patents: utility and design patents. The utility patent is the most frequently acquired patent, with the word "patent" being regularly used as meaning "utility patent." The utility patent's subject matter includes machines, industrial processes, composition of matter and articles of manufacture. Utility patents might also be appropriate to protect new tools and machines used in creating new materials, methods or techniques for manufacturing new products.

A design patent protects any new, original and non-obvious ornamental design for an article of manufacture. The design patent protects only the appearance of an article, not its structure or utilitarian features.

o Complex applications: Design and utility patent applications are complex legal documents which are beyond the ability of most laypersons to prepare. Thus, it is advisable to consult a qualified attorney when considering the subject. Additionally, because of the complex application process, obtaining a patent can be expensive. Design patents are normally less expensive than utility patents and the prices for either design or utility patents depend upon the complexity of the invention.

o Patent searches: The PTO does not require an inventor to search the prior recorded files before filing an application; however, the inventor potentially wastes a lot of money if the invention is not new and novel. The total body of information which may be searched includes published patent applications, books, magazines, technical manuals, etc. At a minimum, most searches try to look at the same resources that will be reviewed by the PTO examiner. A search may cost \$1000 and above, depending upon the level of research.

o Patent marking: Patented products are required to be marked with the word "Patented" or the phrase "Reg. U.S. Pat. and TM Off." and the patent's number. Failure to do so may negate a patent registrant's right to recover damages from infringement. If a patent application is being processed, the applicant may mark the product "patent pending" or "patent applied for" although protection does not begin until a patent has been issued. False or improper use of these markings is prohibited and may subject the offender to a penalty.

Further information concerning patents is presented on the Patent and Trademark Office's website by accessing [General Information Concerning Patents](#). While these materials are helpful, it is advisable to secure qualified legal advice when planning to secure a patent.

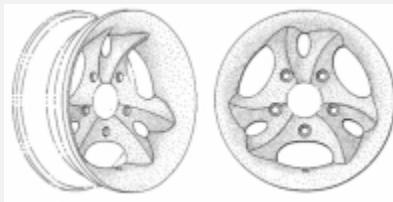
Examples of Design Patents

The design patent is heavily dependent upon the drawings to communicate the features sought to be protected (as opposed to utility patents which rely on the written word to describe how the good is new and unique). The focus of the design patent is on the ornamental design of an article, namely, the visual characteristics or aspects of an object. The filing fee for a design patent starts at \$390.00, plus legal fees. Here are a few examples:

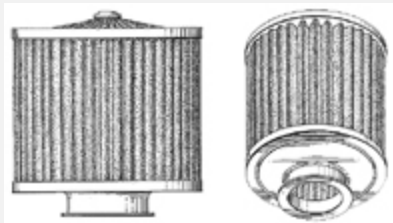
Automobile Hood, SLP Performance Parts, Inc. [Design Patent No. D418,465]



Vehicle Wheel Front Face, American Racing Equipment, Inc.
[Design Patent No. D367,461]



Cylindrical Pleated Air Filter With Top and Sidewall Filtering Areas,
K & N Engineering, Inc. [Design Patent No. D403,414]



o Benefits of Design Patent Registration: Like the trademark registration, a valid design patent shows that you are the true owner of the ornamentation that adorns the product. U.S. courts will accept the patent as proof of the exclusivity of the design. Once again, it is the mechanism that allows you to protect your unique intellectual property and then seek protection in the courts.

Examples of Utility Patents

A utility patent protects an object's structure or utilitarian features, but not its ornamental appearance. In other words, it protects how an object operates or functions.

The subject matter of copyright includes any original "work of authorship" "fixed in any tangible medium of expression."

- o An author is the creator of the original work.
- o "Works of authorship" include, but are not limited to literary works, computer software, pictorial, graphic and sculptural works, motion pictures and audiovisual works, and sound recordings.
- o "Fixed in any tangible medium of expression" means any concrete expression of an author's own idea in a medium such as a printed document, a recording, software, etc.

The subject matter of copyright does not include any procedure, process, system, method of operation, or concept which is described in such work. (Some of this subject matter may be protected via patents.)

Note: It is very important to understand the difference between an expression, which is protected by copyright, and ideas, which are not protected by copyright. A good way to make the distinction is to think of Einstein and his theory of relativity. Under copyright law, Einstein would not have been able to claim any exclusive rights covering his theory alone. Anyone may use the theory. However, once Einstein wrote a book stating, describing and explaining his theory, his book (the expression of the idea) would be protected by copyright.

2. Who holds the property rights?

The copyright owner holds the property rights. Ownership of a copyright is distinct from ownership of any material object in which the work is embodied, hence transfer of the material object does not automatically convey transfer of the copyright.

- o If the work was created by one author, the author is the copyright owner and he/she holds the property rights. He/she may sell or license the property rights to another who will then stand in the place of the author.
- o If the work is prepared by an employee within the scope of his or her employment, or if the work is specially commissioned or ordered, then the employer or the commissioner is considered the copyright owner unless the parties have expressly agreed otherwise in a written document which includes the parties' signatures. Recommendation: "work for hire": when you use material created by an artist who is not an employee, make sure to either pay a royalty for the public use of the work or obtain a copyright release. A written document will demonstrate that the work was commissioned rather than simply being

purchased from an artist's inventory. In the latter instance, the copyright belongs to the creator unless otherwise agreed.

o If there is more than one author, the work is considered a "joint work" and all of the authors hold equal and indivisible interests in the property rights. The property rights may only be sold to another if all of the authors agree to the transaction, or if the selling author accounts to the others for any profits.

3. When do rights vest and for how long?

The property rights vest at the time the original work is fixed in a tangible medium of expression. Copyright protection is automatic, "when the pen is lifted from the paper." The protection can be reinforced and made known to the general public by registering the copyright with the federal government (Library of Congress) and by affixing the © symbol of the work, along with the owner's name and year of first publication.

A created work is automatically protected for a term spanning the copyright author's life plus an additional 70 years after the author's death. For works made for hire, the duration of the copyright term is 95 years from its publication or 120 years from its creation, whichever expires first.

4. What are the rights/limitations?

The copyright owner holds the exclusive right to do or authorize any of the following:

- o To reproduce the copyrighted work in copies;
- o To distribute copies of the copyrighted work to the public by sale or other transfer of ownership, or by license, rental, lease, or lending;
- o To display the copyrighted work publicly (if applicable);
- o To perform the copyrighted work publicly (if applicable);
- o A copyright owner may prohibit any person from doing, and/or sue for infringement any person who does, any of the above activities without the copyright owner's permission or authorization.

The copyright owner may not prohibit the fair use of the copyrighted work by others. Fair use is a complex legal concept but generally can include copying or displaying the copyrighted work for purposes such as criticism, comment, news reporting, teaching, scholarship, or research.

5. Practical tips on copyrights

General: Copyright protection is automatic; however, you can seek the maximum protection of the federal law by registering the mark with the Copyright Office (part of the Library of Congress). In return for a \$30 fee, a completed application form and representative copies or other identifiable materials, the Copyright Office will examine a copyright claim and, if the standards are met, issue a certificate of registration. The more frequently used forms are attached to this document.

Copyright notice: Copyright law provides that the public be given reasonable notice of the claim of copyright. The notice appearing on copies should consist of the following three elements: 1) the © symbol or the word "Copyright"; 2) the year of first publication; and 3) the owner's name. Example: © 2004 Jane Doe.

Additional information: Copyright Office forms and information are available on the Internet at: Copyright Basics. All copyright registrations must be filed by mail or delivered to the Library of Congress by courier service. The Copyright Office is expected to have an on-line registration system for public use sometime in 2005.

Examples of Copyrighted Material

A website design is subject to copyright protection. Note the copyright notice at the bottom of the webpage: Copyright 2004 Specialty Equipment Market Association (SEMA)



A periodical such as SEMA News may be registered with the U.S. Copyright Office.



Stopping Illegal Imports of Trademarks, Copyrights, and Patents

An important mission of U.S. Customs and Border Protection (CBP), a branch of the Department of Homeland Security, is to detect and seize merchandise entering the United States that violates existing IPR. Once you have recorded your trademark or copyright with the PTO or Copyright Office, you should consider taking the next step: register it with the CBP. Trademarks and copyrights may be recorded for \$190.00 each. Customs enters the recordation into a centralized database accessible by all field offices. Customs will detain or seize merchandise that is counterfeit, confusingly similar, or possible pirated material. It will notify the IPR owner about the right to pursue enforcement actions. Customs also has the right to pursue such actions on its own.

The system is a little different for patents. Patents are not recordable with CBP because import infringement issues are under the jurisdiction of the U.S. International Trade Commission (ITC). Suspected infringement cases are taken to the ITC, which issues an exclusion order if there is a proven violation. Customs will then enforce the exclusion order. For more information on Customs enforcement, visit: <http://www.ice.gov/iprcenter/>

Website Links

Patent and Trademark Office, U.S. Department of Commerce

-Basic Facts about Trademarks [\[http://www.uspto.gov/web/offices/tac/doc/basic/\]](http://www.uspto.gov/web/offices/tac/doc/basic/)

-International Trademark Applications [\[http://www.uspto.gov/web/trademarks/madrid/madridindex.htm\]](http://www.uspto.gov/web/trademarks/madrid/madridindex.htm)

-General Information Concerning Patents [<http://www.uspto.gov/patents/index.jsp>]

Copyright Office, Library of Congress

-Copyright Basics [<http://www.copyright.gov>]

U.S. Customs and Border Protection, Department of Homeland Security

-Customs Enforcement [<http://www.ice.gov/iprcenter>]