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BRADLEY ARANT
BOULT CUMMINGS
LLP





ReCharge Your Rights and Protect Your Original Work

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ReCharge Your Rights

U.S. Constitution, Article 1, Section 8

Congress shall have power To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries



ReCharge Your Rights

- Commercial Rights - Contracts
 - Non-disclosure Agreements
 - Proprietary Rights Agreements
 - Invention Assignments
 - Works for Hire
 - Assignment of Rights
 - Licensing
 - Logos, Trademarks, Slogans, Music, Art, Technology
 - Restrictive Covenants
 - Not to compete
 - Not to solicit
 - Not to transfer



ReCharge Your Rights

- Statutory Rights

- Copyrights
- Trademarks & Servicemarks
- Trade Dress
- Trade Secrets
- Patents



ReCharge Your Rights

- Commercial Considerations

- Documentation

- Ownership/License Rights
- Intellectual Property Indemnification
- Limits of Liability/Rights/Damages

- Enforcement

- Statutory Considerations

- Registration

- Compliance

- Infringement



Protect Your Original Work

- Copyrights
- Trademarks & Servicemarks
- Trade Secrets
- Patents



Protect Your Original Work

Copyrights

- Subject Matter:
 - Works of original authorship
 - Fixed in a tangible medium of expression
 - from which they can be perceived, reproduced, or otherwise communicated
 - directly, or with the aid of a machine or device



Protect Your Original Work

Copyrights

- Exclusive rights to:
 - Reproduce
 - Prepare derivative works
 - Distribute copies
 - Publicly perform
 - Publicly display



Protect Your Original Work

Copyrights

- Term of protection:
 - Starts at moment of authorship/creation
 - Individual author - life, plus 70 years
 - Corporation - lesser of:
 - 95 years from publication, or
 - 120 years from creation
 - Registration not required for vesting
 - Registration IS required for bringing suit



Protect Your Original Work

Copyrights

- Employee – “in line and scope”
 - “Author” is the Employer
 - Employer owns the copyright rights
- Independent Contractor
 - Contractor owns the copyright rights, unless otherwise agreed in writing
- Notice provision
 - “Copyright 2012 Bradley Arant Boult Cummings LLP”



Protect Your Original Work

Copyrights

- Works of authorship include:
 - Literary works
 - Musical
 - Dramatic
 - Pantomimes
 - Pictorial, graphic, sculptural
 - Motion pictures, other audiovisual
 - Sound recordings
 - Architectural works



Protect Your Original Work

Copyrights

- Marketing plan
- Audiovisual display
- Company brochures
- Website
- Employee training guides
- Software
- Books
- Sheet music
- Recordings of musical performances



Protect Your Original Work

Copyrights -- Will Not Protect

- Ideas
- Procedures
- Processes
- Systems
- Methods of operation
- Concepts
- Principles
- Discoveries



Protect Your Original Work

Trademarks & Servicemarks

- Indicates source of goods and services
- Word, name, symbol, device, sound, color
- Used to distinguish goods and services from those sold by others
- Brand identity



Protect Your Original Work

Trademarks & Servicemarks

- VERY important right
- Protection while in use (QUAKER – 1895)
- Relatively **inexpensive** (compared to patent protection)
- Registration is important
- Brand identity – market/niche protection
 - Works well across borders, cultures, and languages
 - Provide value for expansion beyond core business
- Assigned, pledged, licensed

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Trademarks & Servicemarks – Weak

- **Generic** - Common names (pizza, house, automobile)
- **Descriptive** - A characteristic, element, function, of the product
 - Not protectable until it acquires "secondary meaning" in consumer's mind. "So associated with the product that it identifies the source of the product and distinguishes the product from those of others". Jeld-Wen v. Dalco Industries (8th Cir. 11/10/99)



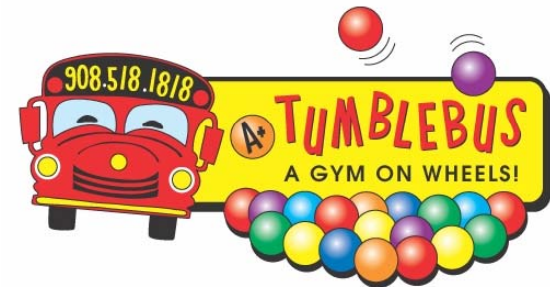
HONEYBAKED
.....
The world's best ham



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Trademarks & Servicemarks – Strong

- **Suggestive** - Suggests something about the product, but does not describe it
- Requires imagination, thought, and perception



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Trademarks & Servicemarks – Strongest

- **Fanciful** or "coined" – meaningless



- **Arbitrary**

– well-known words - arbitrary use





Protect Your Original Work

Trademarks & Servicemarks

How To Protect

- **Select** – Brainstorm, evaluate “strengths”
- **Search** – Clearance, “knockout”, Full Name
- **Register** – Federal, State
- **Use it**
 - Correctly – As an indicator, not as a noun (Aspirin)
 - Consistently – Not different versions
 - With markings – ®, TM, SM
 - Use or Lose – Must use to keep rights
- **Police** – keep track of others’ use
- **Maintain** – perpetual, 5 to 6 yr, renewal, \$\$
- **Broaden** – Int’l market needs? Logo? Design? Tagline?



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Trade Secrets

- Think “Trade” + “Secret”
- Information used in trade or business
 - Formula, pattern, compilation, computer software, drawing, device, method, technique, or process
- Has significant economic value
- Not publicly known
 - Can’t be derived from publicly available sources
- Not generally known to trade or business
- **Has been subject to efforts to keep it secret**



Protect Your Original Work

Trade Secret - Examples

- Vendor and supplier information
- Production or process information
- Cost and price data
- Software source code
- Specifications
- Production know-how



Protect Your Original Work

Trade Secrets - Efforts to keep secret

- Visitor logs
- Secure spaces
- Need to know
- Shredding discipline
- Garbage
- Cleanse old computer hard drives
- Markings
- Don't release outside company



Protect Your Original Work

Patents

A patent is the *right to exclude* others from making, using, selling, or offering to sell the patented invention during the term of the patent



Protect Your Original Work

Patents

What Is Patentable?

- “Any new or useful process, machine, manufacture, or composition of matter, or any new and useful improvement therefor”
- New, Useful, Non-obvious

What is Not Patentable?

- Laws of Nature, Natural Phenomena, Purely Mathematical Algorithms



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Patents

What and When to Patent?

- Patent Application should be considered when a change is made to a product or process to:
 - Solve a Problem
 - Make an Improvement
 - Increase Efficiency
- Invention may be an improvement on another party's product, even if that product is already patented
- Complexity of an invention DOES NOT equate with the value of a patent



Protect Your Original Work

Patents

What is NOT a Patent

- A patent is not the exclusive right to practice (make, use, or sell) the patented invention
- In some cases, such as with improvement patents, you may need a license from others to practice your own invention



Protect Your Original Work

Patents

Government-granted monopoly

- 20 years from date of filing for currently issued patents.
- 17 years for patents issued before June 8, 1995



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Patents

America Invents Act (AIA)

- U.S. is moving from a “first-to-invent” system to a **“first inventor-to-file”** system
 - First true inventor to FILE will be awarded the patent rights
- First-to-file system will apply to applications with priority claims that fall 18 months after the date of enactment (March 16, 2013).



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Patents

Disclosure Grace Period

- The AIA retains an inventor's **one year** grace period for filing an application after disclosure, if the public disclosure:
 - Was made by the inventor
 - Was made by a third party that obtained the information from the inventor
- BUT, no grace period for a third party disclosure of an independently-created invention



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Professional Considerations

- PRSA Professional Standards Advisory PS-14 (Month 2010)
 - Expropriation of the Intellectual Property of Others
- Oversight and audits are helpful



Re-Charge Your Rights and Protect Your Original Work IP Protection Program

- **Build an Effective IP Protection Program**
 - Document, Monitor and Enforce
 - Contractual and Statutory IP Rights
 - Mark/Register IP Rights
 - Build and Maintain a Diverse IP Portfolio
- **Areas of Focus**
 - Identify Best Practices for your Industry
 - Assess Needs, Value and Risks
 - Create Policies and Procedures for IP Protection
 - Provide Training and Oversight to Protect IP Rights



Re-Charge Your Rights and Protect Your Original Work

IP Protection Program

- **Compliance**

- Federal Laws/Regulations – Copyrights, Trademarks, Trade Secrets and Patents
- Local Laws/Regulations – Business torts, Deceptive Trade Practices
- Professional Ethics

- **Risk Assessment**

- Compliance by employees, customers and vendors
- Oversight/audit
- Assessment Tools - automation



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