



INTELLECTUAL PROPERTY MEETS SOCIAL MEDIA

KEVIN M. GOLD



PILLAR+AUGHT

GOALS

- Type of Intellectual Property
- Social Media and IP Issues
- Celebrity Endorsers and Influencers
- Workplace Issues



TYPES OF INTELLECTUAL PROPERTY

TRADE SECRETS

TRADEMARKS

COPYRIGHTS

PATENTS




TRADE SECRETS

- Anything known by you that has value to your business and that is not known to your competitors
 - Methods of manufacturing, computing, selling, etc.
 - Ingredients, recipes for items
 - Vendor relationships and terms
 - Customer lists
 - Internal procedures and policies
- Protection exists only so long as secrecy is maintained



TRADEMARKS

- Anything that identifies and distinguishes your products and/or services to the public
 - Brand names (Coca-Cola® brand soft drinks)
 - Product names (Coca-Cola® Zero® diet soda)
 - Logos 
 - Slogans (*It's the Real Thing*®)
 - Colors (red & white for Coca-Cola®, blue & red for Pepsi-Cola®)
 - Shape of packaging/products (Coca-Cola “hourglass” bottle)
 - Unique sounds, smells (NBC chime, bubble gum scent for motor oils and lubricants)



TRADEMARKS

- Trademark Selection
 - Uniqueness matters
 - Build on your existing brand and image
 - Avoid generic names
 - Avoid marks that are “confusingly similar” to marks for competitor’s goods and services
 - Search before using (Internet, USPTO, market)



TRADEMARKS

- Creating and Preserving Trademark Rights
 - Trademark rights commence immediately upon first use
 - Use TM immediately, and continue to use
 - Use ® only after a Federal trademark application is registered
 - Rights grow as consumer recognition grows
 - Government filings are optional
 - State trademark registrations
 - Federal trademark registrations



COPYRIGHTS

- Any original work of authorship that is fixed in a tangible medium
 - Results from a person's selection of elements to create a "work"
 - Traditional: Paintings, photographs, books, films, articles, sculptures, characters, blueprints, etc.
 - Modern: Product packaging, brochures, pamphlets, websites, videos, contracts, company policies, etc.



COPYRIGHTS

- Copyrights belong to the author
 - Can be assigned to a company, estate, etc.
- Copyrights grant the author the sole right to control the work, including rights to:
 - Copy (all or any significant portion of the work)
 - Distribute, transmit, and sell
 - Publicly display or perform the work
 - Make derivative works
 - Import or export



COPYRIGHTS

- **Creating and Preserving Copyrights**
 - Copyrights commence immediately upon creation and fixing in any medium
 - Use © 2019 The Coca-Cola Company Inc.
- **Government filings are optional**
 - No state copyright registrations exist
 - Federal copyright registrations (simple, inexpensive)
 - US Supreme Court (must file to sue for infringement)



PATENTS

- Patents are a monopoly granted by the government to provide an owner of an invention with the right to exclude others for a fixed period of time from:
 - Making
 - Using
 - Selling
 - Importing



IN-HOUSE IP RESOURCES

- www.uspto.gov = US Patent and TM Office
 - Searching of TMs and patents/applications
 - Allows search by mark, inventor, assignee/owner, application number, etc.
- www.loc.gov = US Copyright Office
- www.pat2pdf.org
 - PDFs of patents
- www.google.com
 - To evaluate trademarks in use, copyrights, patents
 - GooglePatents application allows patent searching



SOCIAL MEDIA

- YouTube
- Twitter
- Facebook
- Instagram
- LinkedIn



COMMON IP ISSUES AND SOLUTIONS

- Twitter Profile Infringement
- Posts Using Someone Else's Trademark (Hashtags)
- Posting Someone Else's Image (Tom Brady)
- Negative Comments Online
- YouTube Video of Internal Company Event
- Infringing/Counterfeit Goods



CELEBRITY ENDORSERS AND INFLUENCERS

- FTC
- Enforcement Actions Against Influencers (Instagram)
- Clear and Conspicuous (#ad #sponsored)
- Not Clear (#thanks #collab #sp #spon #ambassador)



WORKPLACE ISSUES

- Social Media Policy (public vs. private)
- Monitoring
- Secure Usernames on Various Platforms
- Copyright Agent for DMCA
- Internal Policy for Complaint Response/Negative Comments

