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WARNING – Protect Your Intellectual Property Before It's Too Late!

by Mark B. Wilson, Partner, Klein & Wilson

Intellectual property ("IP") is one of the most important business assets. Most startups focus on marketing, sales, revenue, and costs. Protecting a business' IP should make it to the top of the list. For a relatively small amount of money, you can protect your company's IP. Failing to do so can be disastrous.

Many new organizations do not spend legal fees to protect their IP because the expense seems unimportant. This is especially true when the business owner is unsure if the startup will succeed. Many owners believe their competitors will not steal or copy their IP. Unfortunately, IP theft is common, and if you cannot afford to protect your IP, you have to seriously consider if you should start your new business. It is tragic to see a new company begin to make money only to have an unscrupulous competitor capitalize on the IP that is the foundation of the new business. If you fail to properly protect your IP, enforcing your rights can be difficult.

There are four major types of IP: (1) copyrights; (2) trademarks; (3) patents; and (4) trade secrets. A competent attorney will evaluate your IP and determine the protection needed.

Trade secrets protection is often ignored because many organizations do not understand trade secrets. Trade secrets can include customer lists, secret methods of developing or conducting business, sensitive marketing information, unpatented inventions, secret recipes, and other information that gives a business a competitive edge. While the law provides protection for trade secrets without registration fees, companies should get nondisclosure agreements signed by their employees and others who gain access to their trade secrets. Businesses should

train their employees how to properly handle confidential information and employ procedures, such as marking confidential documents with a "trade secrets" legend to safeguard trade secrets. Whatever plan is in place, the startup must execute appropriate steps to protect its trade secrets.

While protecting trade secrets seems simple, a startup must identify its trade secrets and then take active steps to maintain their secrecy for the protection to continue. When defending a business client accused of misappropriating a competitor's customer list, we shocked the competitor by performing a simple Internet search during the competitor's deposition to show that its "secret" customer list was posted on its own website. Trade secrets protection can be lost when the business owner is careless.

Call us at 949.631.3300 you have an IP dispute. We will evaluate the dispute, provide you a strategy, and execute it.

Mark B. Wilson

Mr. Wilson, a trial attorney, has won nearly every case he has tried or arbitrated. He lost only one jury trial but then obtained a complete reversal on appeal. This year, Mr. Wilson was listed in the Super Lawyers® Top 50 Orange County list, and he is a past Chair of the Orange County Bar Association's Business Litigation section.



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